

RECEIVED

JUN - 2 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of) GC Docket No. 92-52
)
Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)
)
) RM-7739
) RM-7740
) RM-7741

ORIGINAL
FILE

COMMENTS
OF CONTEMPORARY COMMUNICATIONS

Larry G. Fuss d/b/a Contemporary Communications ("Contemporary Communications"), by counsel, submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding. As a Petitioner in RM-7741, Contemporary Communications' comments will address the Commission's proposal to institute a Finder's Preference in the context of the Commission's other proposals.

Contemporary Communications believes that the Commission's Policy Statement is accurate in identifying diversification of ownership of mass media and best practicable service to the public as the primary goals upon which the comparative hearing process should focus in determining which applicant would better serve the public interest. Although there are many large media conglomerates, the fact that there are no more than there are is testimony to the success of the Commission's policy

No. of Copies rec'd
List A B C D E

0711

fostering diversity of ownership and views. Contemporary Communications submits that this criterion should be retained without change, except as discussed below. There is no evidence, however, that integration of ownership into management has succeeded in bringing the best practicable service to the public.

The public to be served in the grant of any particular broadcast license are located in the market served by the station. Thus, localism has and should continue to be the touchstone by which this service is measured. Ownership integrated into management, whether or not enhanced by local residence and civic activities, is neither necessary nor sufficient for developing and airing programming directed to the needs and interests of the local community. Contemporary Communications believes that the Commission should focus its concerns more on ensuring that the licensee ascertains local needs and addresses them rather than attempting to predict which applicant is more likely to do so based upon where they live and whether they intend to hire professional management.¹

Therefore, Contemporary Communications believes that the applicant's proposed programming (not format) and community service to serve local interests and needs would be a more appropriate predictor. This, of course, would

¹ Absent the preference for integration of ownership into management, business and market considerations would dictate whether experienced broadcast management is employed. This makes any preference for past broadcast experience irrelevant.

mean that the applicants to be compared would need to put on proof of their ascertainment of local needs and demonstrate that their programming and community service would be responsive to them.² Such a programming exhibit would have the advantage of employing concepts familiar to the Commission from past regulatory requirements. It would also address such concerns as those expressed by the Civil Rights Organizations by requiring comparative applicants to display sensitivity to minority interests in their programming proposals.³

For any comparative criteria to be meaningful, rather than a paper exercise, the winning applicant would have to be committed to the facility granted and the local market. This has the advantage of reducing turnover in the industry and increasing its stability. Therefore, the Commission's proposal that the winning applicant be required to retain the facility for a minimum of three years would be one means of doing this. Contemporary Communications submits,

² To avoid increasing the costs of applying for a new station, a factor of particular concern to the Civil Rights Organizations, applicants should be permitted to amend on an amendment as of right date to include their programming proposals. This would give applicants an initial opportunity to evaluate competing proposals, if any, before undertaking the expense of ascertainment.

³ It would be appropriate for the programming exhibit to take into consideration what other broadcast services are assigned to and received by the community and what proportions of the market population are minorities.

however, that this should be a requirement rather than an optional preference.⁴

There are other preferences which address the same goal. Another method is the Finder's Preference, i.e., awarding a preference to a comparative applicant who has already demonstrated a commitment to the market by seeking a new allotment through rulemaking. This would have the advantage of also creating an incentive for new stations in areas least-likely to be served, rural and small markets.⁵

The Day-timer Preference also serves this purpose. The licensee of a stand-alone AM station which applies for an FM station in the same community has already demonstrated a commitment to serving that community. It serves the additional goal of alleviating some of the problems day-timers have historically faced.

Contemporary Communications believes that these four factors are those which the Commission should adopt for

⁴ As in all Commission requirements, waivers would be appropriate to address particular circumstances. For example, licensees which could demonstrate financial distress or whose basic qualifications are at issue would be appropriate waiver candidates. Permitting a waiver for sale to minorities would also provide an incentive to increase minority ownership in broadcast facilities.

⁵ As there are very few, if any, drop-in opportunities in large markets remaining, the Finder's Preference would, when invoked, absorb considerations of efficient use of spectrum. By virtue of having identified an underserved area and the Commission's determination in the rulemaking process that the allotment would be in the public interest, there would be no reason to reconsider the efficient use of spectrum issue in a comparative proceeding.

comparison of competing applicants, giving them equal weight. The costs of comparative hearings are increasingly prohibitive to otherwise qualified and, sometimes, superior applicants. Minimizing and simplifying the criteria to be used to compare applicants will permit earlier and more accurate analysis of relative positions and encourage settlements. Even if a settlement cannot be accomplished, more qualified applicants will be able to afford the comparative process and will not be driven out of the process merely by financial considerations.⁶

The Commission's proposal to use "first to file" as a tie-breaker would also reduce the costs of applications by encouraging applicants to file early, rather than late, in the filing window. Absent the integration factor, there is no disadvantage in filing early.⁷ Other interested parties would have the opportunity to evaluate the level of interest

⁶ The financial aspects of the process are ones which have been noted by the Civil Rights Organizations as of particular concern to them. For purposes of these Comments, their assertions that minorities are virtually limited to applying for stations in order to acquire them because they cannot afford to buy them, are taken at face value. Therefore, these proposals would be of greater benefit to them.

⁷ The existing tendency to file late in a window is based, in part, upon the fear that once ownership structure is revealed, another application will be filed which can be structured to a better advantage in the comparative process. Eliminating the integration criterion will also eliminate the endless stream of Commission inquiries in comparative hearings on the validity of ownership structures.


in the facility and the comparative status of the applicants to determine whether to even file an application.

For all of the above reasons, Contemporary Communications respectfully submits that the Commission should employ four criteria, equally weighted, to compare competing applications: diversification, proposed programming and community service, finder's preference, and day-timer's preference and that it should employ a "first-to-file" method of tie-breaking. Above all, Contemporary Communications urges the Commission to simplify the comparative criteria to give greater opportunity to all qualified applicants to participate.

Respectfully submitted,

LARRY G. FUSS d/b/a
CONTEMPORARY COMMUNICATIONS

By:


Barbara L. Waite
VENABLE, BAETJER, HOWARD
& CIVILETTI
1201 New York Avenue NW
Suite 1201
Washington, DC 20005
(202) 962-4811

His Counsel

June 2, 1992

CERTIFICATE OF SERVICE

I, Angela P. Fitzgerald, hereby certify that a copy of the foregoing Comments were served, by U.S. Mail, this 2nd day of June, 1992, on the following:

Lewis J. Paper
Keck, Mahin & Cate
1201 New York Avenue NW
Washington, DC 20005
Attorneys for Jeffrey Rochlis

B. Jay Baraff
Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue NW, Ste. 300
Washington, DC 20015-2003
Attorneys for Gerald R. Proctor

Eduardo Pena
1101 14th St. NW, Ste. 610
Washington, DC 20005
Counsel for the League of United Latin
American Citizens

Angela P. Fitzgerald